IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

WP(C).No. 30169 of 2006(N)

PETITIONERS:
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1. DR.FRANCO JOSEPH, KIDENGAN HOUSE,
   ST.MARY'S STREET, KURIACHIRA, THRISSUR.
   (II MD (HOM) PRACTICE OF MEDICINE,
   GHMC, KOZHIKODE).

2. DR. ANZAL ASHRAF P.M.,
   VALYAVEETTIL HOUSE, CHANDRAKKADAVU ROAD,
   P.O. VALAPPAD, THRISSUR DISTRICT.
   (I MD (HOM) HOMOEOPATHIC PHARMACY,
   GHMC, KOZHIKODE).

3. DR.LIJINA K.K., KARIMPALANKANDY,
   KALPATHUR P.O., MEPPAYUR, KOZHIKODE
   (II MD (HOM) PRACTICE OF MEDICINE, GHMC,
   KOZHIKODE).

4. DR.SARAH NANDANA MATHEW,
   OLICKAL HOUSE, EAST VAZHAPILLY P.O.,
   MUVATTUPUZHA.
   (II MD (HOM)PRACTICE OF MEDICINE, GHMC,
   KOZHIKODE).

5. DR.SHABINA BALAKRISHNAN,
   `SHABNAM', 4TH MILE, PULLYODE ROAD,
   PONIYAM WEST, THALASSERY.
   (I MD (HOM)PRACTICE OF MEDICINE).

6. DR.PARVATHY C.S.,
   TC 19/1992 (5) MAMPAZHATHOTTAM,
   POOJAPPURA P.O., THIRUVANANTHAPURAM.
   (I MD (HOM) PRACTICE OF MEDICINE,
   GHMC, KOZHIKODE).

7. DR.PRAVEEN B. VISWAM, KOKILA,
   THRIVENI GARDENS, CALVORY ROAD,
   WEST FORT, THRISSUR.
   (II MD (HOM) PRACTICE OF MEDICINE,
   GHMC, KOZHIKODE).

8. DR.BINDU. S., SYAMALA BHAVAN,
PAZHAYA ROAD, MEDICAL COLLEGE P.O.,
THIRUVANANTHAPURAM.
(I MD (HOM) HOMOEOPATHIC PHARMACY, GHMC, KOZHIKODE).

9. DR.ANJANA. S. PILLAI, TC 20/241,
PALAMUTTATHU, MELARANNOOR, KARAMANA P.O.,
THIRUVANANTHAPURAM.
(I MD (HOM) HOMOEOPATHIC PHARMACY, GHMC,
KOZHIKODE).

10. DR. CEEBA MARY FERNANDEZ, `SIBI DALE'
HOUSE NO.19, BISHOP PALACE NAGAR,
THANGASSERI, KOLLAM.
(I MD (HOM) HOMOEOPATHIC PHARMACY, GHMC,
KOZHIKODE).

11. DR.KANCHAN KUMAR,
VILL-PHRASIH (SMALL), P.O. NAGWAN (PATHRA)
DISTRICT GAYA, BIHAR.
(I MD (HOM)HOMOEOPATHIC PHARMACY, GHMC,
KOZHIKODE).

12. DR.SINDUMOL K.S.,
PUTHOORATH (E) HOUSE, KANNAMANGALAM (N)
CHETTIKULANGARA P.O., MAVELIKKARA,
ALAPPUZHA DISTRICT
(II MD (HOM) HOMOEOPATHIC PHARMACY,
GHMC, KOZHIKODE).

13. DR.JAYASREE. D.,
AMBADI, THIRUVANKULAM P.O.,
ERNAKULAM DISTRICT.
(II MD (HOM) HOMOEOPATHIC PHARMACY,
GHMC, KOZHIKODE).

14. DR.PRIYA DAYANANDAN, APSARA,
UNIVRSITY NAGAR, VELLANIKKARA P.O., THRISSUR.
(II MD (HOM) HOMOEOPATHIC PHARMACY,
GHMC, KOZHIKODE).

15. DR.MATHEW ANDREWS. O.,
OLAKKENGIL HOUSE, `GREEN FIELDS' HOPE LODGE,
PAVARATTY P.O., THRISSUR DISTRICT.
(I MD (HOM) PRACTICE OF MEDICINE,
GHMC, KOZHIKODE).

16. DR.K.S. GOPI, ASHIRWAD,
CHEMPACA COLONY, BEYPORE P.O., CALICUT.
(II MD (HOM) HOMOEOPATHIC PHARMACY,
GHMC, KOZHIKODE.)

17. DR.PRAKASAN M.P., HOUSE NO.2/747 A,
`DIVYA', KARAPARAMBA P.O., KOZHIKODE-10.
(II MD (HOM) PRACTICE OF MEDICINE,
GHMC, KOZHIKODE).

18. DR. P. ABDUL HAMEED,
`THEROTIL' THUNJAN ROAD, TIRUR-1.
(I MD (HOM) PRATICE OF MEDICINE, GHMC,
KOZHIKODE).

19. DR.P. SUNIL RAJ,
PARAPPURATHKANDY HOUSE, NANMINDA P.O.,
CALICUT.
(I MD (HOM) HOMOEOPATHIC PHARMACY, GHMC,
KOZHIKODE).

20. DR.T.K. SAJEEV, K.P.X/178,
VARADA, PALAMVILA LANE, N C C ROAD,
PERURKADA P.O., THIRUVANANTHAPURAM.
(I MD (HOM) PRACTICE OF MEDICINE,
GHMC, KOZHIKODE).

21. DR.T.G. SIJI, VADAKKE PUTHENPURAYIL,
KARUMADY P.O., AMBALAPUZHA,
ALAPPUZHA.
(II MD (HOM) HOMOEOPATHIC PHARMACY,
GHMC, KOZHIKODE).

22. DR.HYDERALI P., ARIFA MANZIL,
PARAMMEL, NATTUKAL P.O., MANNARKKAD,
PALAKKAD.
(I MD (HOM) PRACTICE OF MEDICINE,
GHMC, KOZHIKODE.)

BY ADV. SRI.T.G.RAJENDRAN

RESPONDENTS:

1. STATE OF KERALA, REP. BY ITS SECRETARY
HEALTH & FAIMLY WELFARE DEPARTMESNT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE PRINCIPAL AND CONTROLLING OFFICER, GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE, THIRUVANANTHAPURAM.

3. THE PRINCIPAL, GOVERNMENT HOMOEOPATHIC MEDICAL COLLEGE, KOZHIKODE.

4. CENTRAL COUNCIL OF HOMOEOPATHY REP. BY ITS SECRETARY, NEW DELHI.

5. THE SECRETARY, DEPARTMENT OF AYURVEDA, YOGA & NATUROPATHY, UNANI, SIDDHA AND HOMOEOPATHY (AYUSH), MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA, NEW DELHI.

6. UNIVERSITY OF CALICUT REP. BY ITS REGISTRAR, CALICUT UNIVERSITY P.O.

7. GOVERNMENT OF INDIA, REP. BY THE SECRETARY, MINISTRY OF HEALTH & FAMILY WELFARE, GOVERNMENT OF INDIA, NEW DELHI.

BY ADV. SRI.V.K.MOHAMMED YOUSUF, ADDL.CGSC
STANDING COUNSEL SRI.E.S.ASHRAF, for UNIVERSITY.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 06/12/2000 ALONG WITH WPC 29770 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C)NO.30169 & 29770 OF 2006

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Dated this the 6th day of December 2006

JUDGMENT

Since common issue arise in both the writ petitions, cases are clubbed together, heard and disposed of by this common judgment.

2. Petitioners in both the writ petitions are post graduate students in Homoeopathi at the Government Homoeo College at Trivandrum and Kozhikode which are attached to the Kerala University and the Calicut University respectively. State Government sanctioned for commencement of post graduate courses in two more subjects in the Homoeopathic Medical Colleges which are already approved for conducting Post Graduate courses in other subjects. Pursuant to decision by the Government, entrance examination for selection of students was held and petitioners and other students were admitted in the first year post graduate course in the year 2005. The students who joined colleges were unaware of the fact that the course was not approved by the Central Homoeopathic Council and the Government of India and University affiliation was also not granted.

3. Common counsel appearing for Central Government as well as the Central Homoeopathic Council submitted that the application should be first submitted by the State Government to the concerned Central Government department for prior approval of the course and thereafter the Homoeopathic Council will have to conduct inspection and on being satisfied approval will be granted. Since two colleges in which petitioners have joined have not made any application and no steps were taken by the Central Government or by the Central Homoeopathic Council. Counsel appearing for Universities pointed out that University can grant affiliation for the courses only after the courses are approved by Central Homoeopathic Council which again is granted only after prior approval by the Government.

4. The lapses on the part of the State Government in getting prior approval from the Central Government and recognition of the courses from the Central Homoeopathic Council are admitted. However, Government Pleader representing State Government submitted that State Government has even released funds to the Principals of the college for applying for prior approval from Central Government

and for filing application before the Central Homoeopathic Council. The Principals however delayed filing of the applications and therefore those stand rejected by the Central Homoeopathic Council and by Central Government purely on grounds of delay. The question to be considered is whether the lapses whether it be on the part of the Principals of the colleges or of the State Government should be allowed to spoil the career of students who have joined the course and continued studies for over 1 ½ years. It is also reported that State Government has even funded the students for pursue their studies. It is conceded by all the concerned that the two new Post Graduate Courses started in Government colleges at Trivandrum and Calicut were already approved by the Central Homoeopathic Council for other colleges and the same syllabus is followed by the colleges in Kerala. So far as prior approval of Government of India is concerned, it is only a policy decision and Government has no other role. Central Government counsel pointed out that there may not be any objection for the Government of India to approve Post Graduate courses in the two subjects commenced by the two colleges in Kerala. In other words, it has to be assumed

that if applications were submitted in time, Government would have granted its approval. The balance is the approval by the Central Homoeopathic Council which has to visit the colleges and verify the infrastructural and instructional facilities available in the colleges to impart proper education to the students. If the Central Homoeopathic Council, on inspection, is satisfied with the infrastructural and instructional facilities provided in the two Government colleges which have commenced courses without prior approval from the Central Government, then I see no reason why approval cannot be granted retrospectively as the same only can protect the interest of the students who joined the Government colleges assuming that the courses were commenced with all proper clearances.

5. Therefore, writ petitions are disposed of by directing the concerned department of Central Government to reconsider the application for prior approval and if approval can be granted, grant the approval with retrospective effect from 1st May 2005 to regularise the courses already commenced by the two colleges run by the State Government. Similarly, there will be a direction to the Central Homoeopathic Council to conduct

immediate inspection of the colleges and if they are satisfied that the courses in the subjects were started with the required facilities then to grant recognition with retrospective effect from 1st May 2005 so that the courses commenced stand regularised. Both the Central Government and the Central Homoeopathic Council are directed to take a decision within one month from the date of production of a copy of judgment by the petitioners or by the colleges as the case may be. Following the direction issued to Central Government and Central Homoeopathic Council, there will be a direction to the Vice Chancellor of both concerned Universities to grant affiliation to two courses with retrospective effect from 1st May 2005 and conduct examination without any delay. Returned application will be forwarded by the Principal for fresh consideration and decision.

Writ petitions are allowed as above.

C.N.RAMACHANDRAN NAIR, JUDGE

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